IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRP.No. 1392 of 1999(E)

(AGAINST THE PROCEEDINGS NO.L6.SR.4/73/PRR DTD. 28/6/1994 OF THE TALUK LAND BOARD, PARAVOOR)

REVN. PETITIONER/APPLICANT:

T.K. NARAYANAN, S/O.KUTTAN, 72 YEARS,
THADICKAL HOUSE, SOUTH ADUVASSERY P.O.,
NORTH PARUR, ERNAKULAM DISTRICT.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THEL CHIEF SECRETARY TO GOVT.,GOVT. SECRETARIAT, TRIVANDRUM.

2. THE TALUK LAND BOARD, PARUR, REPRESENTEDL BY ITS CHAIRMAN, (THE DEPUTY COLLECTOR (LR), ERNAKULAM), COLLECTORATE, KAKKANAD, ERNAKULAM.

BY GOVERNMENT PLEADER SRI SHYSON P. MANGUZHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN,J

C.R.P.NO.1392 OF 1999

Dated this the 21st day of February, 2007

O R D E R

Petitioner challenges the proceedings of the Taluk Land Board, in No.L6.SR.4/73/PRR. dated 28/6/1994, which relates to the ceiling return filed by one Mathew Paulo and others. Petitioner set up a claim of tenancy in respect of an extent of 2 acres of land in Sy.No.668/1A. He sought for exclusion of the said land in the ceiling case of the declarant. It was rejected by the Taluk Land Board stating that the petitioner had filed another petition on 27/11/1993 claiming tenancy right over 2 acres of land in Sy.No.668/1A wherein he is residing now and in this connection by order dated 29/9/81 and 14/10/86 the claim of tenancy set up by the

petitioner was rejected and this Court by order dated 1/3/1990 in C.R.P.355/87 has confirmed the decision of the Taluk Land Board except in respect of 1.40 acres towards tenancy which are already allowed now and hence the present claim is without any merit and also barred and hence rejected. According to the petitioner, the claim now made is in Sy.No.668/1A and the previous claim related to the land in Sy.No.668/AB and therefore the rejection of his claim made earlier and the relief granted in C.R.P.No.355/87 limiting to 1.40 acres is a different land which is not the subject matter of the present claim and hence the order of the Taluk Land Board is bad in law. It is also his contention that 12 documents were produced along with the application, but none of the applications was considered. I have perused the records which would show that the suit

O.S.No.613/62 was filed before the Principal Munsiff's Court, Parur by one Paulo Varghese and others as plantiffs against the petitioner herein and his wife Janaky as the defendants. The suit was one for removal of trespass and recovery of possession. The contention of the petitioner herein was that the property having an extent of 2 acres 11 cents in Sy.No.668/1 is not under the possession of the plaintiff. 1 acre 50 cents in Sy.No.668/1-B comprised in the plaint schedule property and in the sub division No. A of the same number half an acre, which is in the possession of the defendants. In the very same survey number 2 1/2 acres are in the possession of the lst defendant's father. Of this portion under the possession of the defendants 1 acre 22 cents are paddy field from which one half is given to the plaintiff as varam. In the plaint schedule property an area of having 2 acres

28 cents has been under the possession of lst defendant's father for the last 30 years. The rend deed in 1114 was got executed by the plaintiff by misguiding the lst defendant's father and hence the document is not a bona fide instrument and it has not come into force. About 1 acre from this portion has been in the possession of the lst defendant after 1962. The allegation that the building in the plaint schedule property has been constructed in 15/2/1958 is false and at the end of 1956, the lst defendant has transferred his residence in the plaint schedule hut. The description in the plaint that the disputed building is situated on the paddy field is untrue as the building itself is surrounded by trees. Eventually, as per the final orders passed in S.A.No.175/77 it was found that the trial court found pursuant to the remand order that the the building was put up after filling

up a portion of the paddy field in respect of which lst defendant's father has fixity of tenure and that the building is located in the 1.40 acres of land in respect of which the lst defendant's father had varam rights. Hence, no interference was made with regard to that finding and it was made clear that the lst defendant's plea is only that his father had varam right in respect of 1.40 acres of land in Sy.No.668/1B and that the lst defendant has no claim of right to any portion other than the land aforesaid. Subsequently, the petitioner put in a claim for exclusion of an extent of 4.50 acres which was rejected by the earlier order which was the subject matter of C.R.P.No.355/87 before this Court. By order dated 1/3/1990 this Court found that the petitioner herein had filed another application earlier, which was rejected and the present claim was rejected on the basis of

the previous order dated 29/9/1981. However, in the course of hearing, the petitioner produced a copy of the judgment in S.A.No.175/77 to support his claim that he is entitled to fixity of tenure in respect of 1.40 acres of land in Sy.No.668/1B. I have already referred to the judgment in S.A.No.175/77 in the above paragraph. In the light of the finding of this Court in the judgment in S.A.No.175/77, the C.R.P. was allowed by way of remand to the limited extent to consider the question of exclusion of 1.40 acres of land covered by the judgment in the above second appeal. Pursuant to the remand order, the Land Tribunal has excluded 1.40 acres as already referred in the present order to which reference has already been made. Further claim for exclusion of an extent of 2 acres is therefore a belated claim unsupported by any materials and further it

cannot be held that this property is different from the property in respect of which his claim was already adjudicated and relief granted as aforesaid. Further the petitioner cannot go on filing application under Section 85(8) of the K.L.R. Act merely by changing survey number and raising fresh claim. If at all he had any claim of tenancy in respect of any portion of the land said to be in his possession, he ought to have included all such claims in a composite petition. The petitioner had filed two petitions earlier. It cannot be believed that the present claim is different from the claim in respect of which consideration has been made by the Land Board and confirmed by this Court. In the claim petition filed the description of the property would clearly show that the survey number is 668/AB. No attempt is made to show that the boundaries of properties now sought to be

excluded is different from the other property. If at all any such contention is there, the same has to be supported by material evidence. Even in the second appeal both Sy. Nos. 668/1B and 668/1A are seen referred to. Petitioner has been given the benefit of exclusion of an extent of 1.40 acres of land. It is not shown that he is entitled to any further exclusion. The order of the Taluk Land Board rejecting the claim now preferred does not suffer from any illegality or irregularity warranting interference under Section 103 of the Kerala Land Reforms Act.

2. It is also seen from the records that the documents which the petitioner was placing reliance on itself were sought to be taken back by filing appropriate petition so as to enable him to produce the same before the civil court, where the civil case was pending. This also indicates that the property now

claimed is something different from the property already excluded allowing his earlier claim.

I find no merit in this revision and accordingly it is dismissed.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.1392 OF 1999

O R D E R

21st February, 2007